

ORDINANCE NO. 4047

BILL NO. 45 (2013)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR TAX MAP KEY NUMBER (2)4-9-002:001 (POR.), LANAI, MAUI, HAWAII

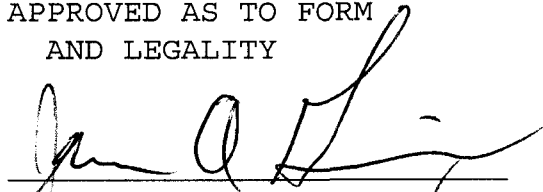
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapters 19.26 and 19.510, Maui County Code, a change in zoning from Agricultural District to M-2 Heavy Industrial District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Lanai, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2)4-9-002:001 (por.), comprising approximately 6.019 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-2619, which is on file at the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, attached hereto and made a part hereof as Exhibit "C".

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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CHANGE IN ZONING
PORTION OF LOT 13-A
LAND COURT CONSOLIDATION 170 (MAP 6)
AT LANAI, MAUI, HAWAII

Beginning at the Northeasterly corner of this Parcel of Land, said point being 329° 42' and 580.00 feet from the Southeasterly corner of Lot 12, Land Court Consolidation 170 (Map 5), the coordinates of said point of beginning referred to Government Survey Triangulation Station "POHOULA" being 20,660.77 feet South and 3,752.37 feet West and running by azimuths measured clockwise from True South:

1. 329° 42' 249.70 feet along the remainder of Lot 13-A;
2. 59° 42' 1,050.00 feet along the remainder of Lot 13-A;
3. 149° 42' 249.70 feet along the remainder of Lot 13-A;
4. 239° 42' 1,050.00 feet along the remainder of Lot 13-A to the point of beginning and containing an area of 6.019 Acres.



R. T. TANAKA ENGINEERS, INC.

A handwritten signature in dark ink, appearing to read "K. T. Tanaka".

Kirk T. Tanaka
Licensed Professional Surveyor
Certificate No. 7223-LS
License Expires: April 30, 2006

871 Kolu Street, Suite 201
Wailuku, Hawaii 96793

February 2, 2006

EXHIBIT "A"

EXHIBIT "B"

CONDITIONS

1. That 50 per cent of the land area zoned M-2 Heavy Industrial shall be offered for sale in fee simple at fair appraisal value for 5 years after final subdivision approval or until at least 50 per cent of the land area has been sold, whichever is earlier.
2. That Lanai Resorts, LLC shall ensure that water use for the project will not adversely affect water resources by: (a) ensuring that projected demand and allocation are consistent with the Water Use and Development Plan for Lanai, prior to the location or relocation of any user or subdivision processing; and (b) detailing aggregate water usage by meter readings on the monthly periodic water report for the subject six (6) acre site.
3. That Lanai Resorts, LLC shall utilize brackish and/or reclaimed water for irrigation and other non-potable water uses, where feasible.
4. That Lanai Resorts, LLC shall apply water conservation measures wherever possible. Where appropriate, Lanai Resorts, LLC shall utilize low-flow fixtures and devices; maintain fixtures to prevent leaks; utilize climate-adapted plants; and prevent over-watering by automated systems.
5. That all cleaning, repairs, and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.
6. That all employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling

any industrial liquids. Employees shall be aware to prevent any industrial liquid spills onto the bare ground.

7. That barrels for the temporary storage of used motor oil or other industrial liquid shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain.
8. That a final detailed drainage and erosion control plan shall be submitted to the Department of Public Works for review and approval for each phase of development and prior to final subdivision approval for the entire six (6) acre site.
9. During any grubbing and/or grading of the site, an archaeological monitor shall be present to observe ground work to ensure that subsurface features are not encountered. Should such features be encountered, work in the immediate area shall stop until the context of the artifacts can be properly documented. Should human remains be unearthed, Lanai Resorts, LLC shall comply with Chapter 6E, Hawaii Revised Statutes, and Burial Laws.
10. That the entire ten (10)-inch waterline serving the Palawai Basin Water System shall be upgraded or replaced.
11. That if polyvinyl chloride (PVC) pipe is selected for waterline replacement, pipe selection shall comply with the special requirements for PVC as found in the Water Systems Standards.
12. That fire protection and domestic uses shall meet State water system standards as certified and stamped by a licensed engineer.
13. That at such time the State Department of Transportation ("DOT"), Airports Division, ("DOT-AIR") decides to expand Lanai Airport towards Miki Road and DOT-AIR notifies Lanai Resorts, LLC in writing that Miki Road must be relocated, Lanai Resorts, LLC shall relocate Miki Road and its associated utilities off the airport boundaries at no cost to DOT. Lanai Resorts, LLC may be required, at the discretion of DOT Highways Division ("DOT-HWY"), to submit an updated traffic assessment for review and acceptance of

the relocation of Miki Road at no cost to DOT. Within sixty days of the effective date of the ordinance, Lanai Resorts, LLC shall submit a letter to DOT confirming its agreement to these requirements.

14. That within one year of the effective date of the ordinance, Lanai Resorts, LLC shall prepare and submit to DOT-AIR a grant of access easement for the portion of the access road that infringes upon DOT-AIR property. The access easement shall remain in effect until Miki Road is relocated.
15. That Lanai Resorts, LLC shall improve the Miki Road approach to Kaumalapau Highway, at no cost to DOT, to a two-lane roadway with appropriate turning radii, within the highway right-of-way, at the discretion of, and when required by, the DOT-HWY, Maui District Engineer.
16. That in the event DOT-HWY determines that traffic issues have arisen that can be attributed to the heavy industrial park within one year after fulfilling Condition No. 1, Lanai Resorts, LLC shall be responsible for mitigation of the traffic impacts and issues at no cost to DOT, to the satisfaction of the DOT-HWY, Maui District Engineer.

THE ORIGINAL OF THE DOCUMENT
FOLLOWS:
STATE OF HAWAII
REAL ESTATE CONVEYANCES

Doc A-49131201
June 14, 2013 8:02 AM

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail (X) Pickup () : To:
Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: 8

Affects Tax Map Key (2)4-9-002:001(por.)

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL
ZONING

THIS INDENTURE, made this 24TH day of April, 2013
by LANAI RESORTS, LLC, a Hawaii limited liability company whose principal place
of business is located in Lanai, Hawai'i and whose mailing address is 733 Bishop
Street, Suite 2000, Honolulu, Hawaii 96813, hereinafter referred to as
"DECLARANT", and who is the owner of that certain parcel located at Lanai, Hawaii,
comprised of approximately 6.019 acres, and identified for real property tax
purposes by Tax Map Key No. (2)4-9-002:001(por.), hereinafter referred to as
"PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter
referred to as "Council", is considering the establishment of M-2 Heavy Industrial
District zoning for the Parcel, comprised of approximately 6.019 acres, which is
more particularly described in Exhibit "1", which is attached hereto and made a part
hereof, and which is more particularly identified in Land Zoning Map No. L-2619,
which is on file in the Office of the County Clerk of the County of Maui; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. 13-60, that said establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

2. That until written release by the County of Maui, the Parcel, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Parcel, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Parcel by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Parcel the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of M-2 Heavy Industrial District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said Parcel in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance; and

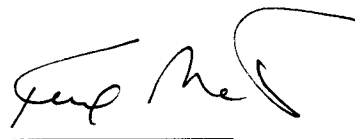
7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:

LANAI RESORTS, LLC

By 

Print Name: KURT MATSUMOTO
Title: COO

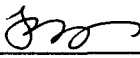
APPROVED AS TO FORM AND LEGALITY:



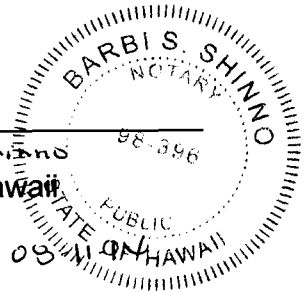
JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui


STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

On this 24th day of April, 2013, before me personally appeared Kurt Matsumoto, to me personally known who being by me duly sworn, did say that he is the C.O.O. of **LANAI RESORTS, LLC** and that said instrument was signed and sealed on behalf of said organization/corporation or by authority of its Board of Directors, and the said Office acknowledged said instrument to be the free act and deed of said organization/corporation.


Print Name: Barb S. Shino
Notary Public, State of Hawaii

My Commission expires: 09/01/14



Doc. Date: <u>4.24.13</u> # Pages: <u>3</u>	
Notary Name: <u>Barb S. Shino</u>	
<u>Fifth</u> Circuit	
Doc. Description: <u>Unilateral Agreement - Declaration for Conditional Zoning</u>	
	<u>4.24.13</u>
Notary Signature	Date
NOTARY CERTIFICATION	

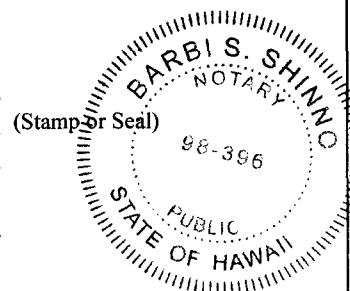


EXHIBIT "1"

CHANGE IN ZONING

PORTION OF LOT 13-A

LAND COURT CONSOLIDATION 170 (MAP 6)

AT LANAI, MAUI, HAWAII

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Kirk T. Tanaka
Licensed Professional Surveyor
Certificate No. 7223-LS
License Expires: April 30, 2006

871 Kolu Street, Suite 201
Wailuku, Hawaii 96793

February 2, 2006

EXHIBIT "2"

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WE HEREBY CERTIFY that the foregoing BILL NO. 45 (2013)

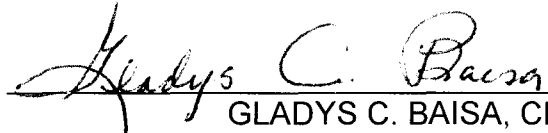
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 25th day of June, 2013, by the following vote:


Gladys C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 25th day of June, 2013.


DATED AT WAILUKU, MAUI, HAWAII, this 25th day of June, 2013.

RECEIVED
2013 JUN 25 PM 12:01
OFFICE OF THE MAYOR

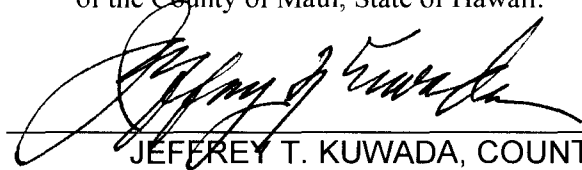

GLADYS C. BAISA, CHAIR
Council of the County of Maui


JEFFREY T. KUWADA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 26 DAY OF June, 2013.


ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4047 of the County of Maui, State of Hawaii.


JEFFREY T. KUWADA, COUNTY CLERK
County of Maui

Passed First Reading on May 28, 2013.
Effective date of Ordinance June 26, 2013

RECEIVED
2013 JUN 27 AM 9:45
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4047, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui